
OPINION OF THE PUBLIC ACCESS COUNSELOR

JAMIE M. REITENOUR,
Complainant,

v.

CITY OF LAWRENCE
Respondent.

Formal Complaint No.
18-FC-96

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging that the City of Lawrence violated the Access to Public Records Act.¹ The City filed an answer to the complaint through Corporation Counsel David P. Johnson. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on July 12, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

This case involves a dispute over records related to a specific property in the City of Lawrence.

Jamie M. Reitenour (“Reitenour”) contends that the City of Lawrence (“City”) has violated the Access to Public Records Act (“APRA”) by failing to provide certain responsive records within a reasonable time as required by the Act.

On May 23, 2018, Reitenour filed a public records request (“Request One”) with the City of Lawrence seeking the following:

The Covenant referenced in the 6/28/2016 USB City of Lawrence meeting minutes (see attached) referencing address 6703 Colville with motion approved. Please provide the fully executed copy of this covenant between the City of Lawrence and M/I Homes for address “6703 Colville”...

The City timely acknowledged the Reitenour’s request on May 24, 2018. That same day, Reitenour filed a second public records request (“Request Two”) with the City seeking the following:

A copy of emails exchanged (sent and received) between the following senders and recipients: 1. Dave Lotts and Jklien@mihomes.com; 2. William “Bill” Anthony and kwindler@mihomes.com; 3. William “Bill” Anthony and Julie Kukolla; 4. William “Bill” Anthony and Scott Salsbery

From July 1, 2016 to December 31, 2016; Including or referencing; expressly or implicitly, the following subject matters and/or key words:

“6711 Colville Place,” “Woods at Indiana Lake,”
“Lot 47,” “WIL,” “Lot 47 WIL.”

On May 25, 2018, the City timely responded to Request Two with an acknowledgement.

After Reitenour did not receive the requested records, she filed two formal complaints with this Office dated June 18, 2018 (Request One) and June 26, 2018 (Request Two) respectively.

Notably, the City provided the record requested in Request One to Reitenour on July 6, 2018.

In its answer to the complaint, the City denies that an APRA violation has occurred in this case.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

The Access to Public Records Act (“APRA”) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The City of Lawrence is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the City’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal

statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

In this case, there is little doubt that the City should have responded more quickly in general, but certainly as it applies to Reitenour's second request.

In general, this Office affords public agencies a fair amount of deference concerning what constitutes a reasonable time—for purposes of APRA—in producing records for inspection and copying. Here, the City required Reitenour to wait 76 calendar days to tell her it had nothing responsive to Request Two.

It is true that Reitenour, in Request Two, asked for certain email messages to and from the City. The process of retrieving and reviewing emails for disclosure tends to take longer than producing more routine records (e.g., meeting minutes; contracts) for inspection and copying. Since there were no responsive records to review, the reasonableness of the delay is even more questionable.

What is more, Reitenour had a pending formal complaint against the City with this Office over this issue. The City's answer to this Office was due by August 11, 2018; and, the City informed Reitenour that it had nothing for her just two days prior to answering her complaint over the emails. This, too, is concerning.

Equally problematic is the noticeable tension between the parties. The City, for its part, contends that it has provided

Reitenour with over 1,000 pages of documents over the past year despite her repeated accusations that the City is hiding records, denying access, and “engaging in a grand conspiracy with the builder of her home against her.” The City denies this notion and attributes the delays in this case to staff turnover and other city operational matters.

To be sure, Reitenour has asserted—at minimum—her skepticism of the City’s version of these events. For instance, in one communication with this Office, she declared that the City “has consistently demonstrated reasons to doubt [its] intention to uphold the APRA guidelines.” Further, Reitenour expressly states her belief that the City is engaged in a “game of ‘Cat and Mouse’ using the APRA guidelines now to make it almost impossible for [her] to get all the email correspondence regarding the build of [her] home.”

Although this Office is convinced that the City could have done better as it relates to its response time with these requests, there is no clear reason—based on the information provided—to conclude that the City has unlawfully withheld disclosable public records from Reitenour. Indeed, while Reitenour’s tenacity and persistence to get to the bottom of an issue involving her home is understandable, more evidence is necessary to substantiate malfeasance or non-compliance by the City.

Still, if Reitenour remains convinced that the City is improperly denying her access to disclosable public records, she may—under APRA—file an action in the appropriate circuit or superior court. *See* Ind. Code § 5-14-3-9(e). If she prevails, the court may compel the City to permit inspection and copying of the records in the event the records exist and are being improperly withheld from disclosure.

Regardless, it appears the parties are inching closer to an impasse on this matter. Although this Office does not encourage litigation and considers the administrative remedy through this complaint process to be effective, there are subject matters over which this Office has no jurisdiction. Whether an agency is untruthfully withholding records from a requestor is a question of fact that this Office is not authorized to answer.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the City of Lawrence has not violated the Access to Public Records Act, however, more expedient responses to the nonexistence of records is recommended.

A handwritten signature in black ink, appearing to read 'LH Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor